

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

JAVIER URIBE,	§	
Individually and on behalf	§	Civil Action No. 4:18-cv-00726
of all others similarly situated	§	
	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	JURY TRIAL DEMANDED
	§	
HOUSTON WASTE SOLUTIONS, LLC	§	
	§	COLLECTIVE ACTION
<i>Defendant.</i>	§	PURSUANT TO 29 U.S.C § 216(b)

**DEFENDANT HOUSTON WASTE SOLUTIONS, LLC’S
ORIGINAL ANSWER**

Defendant Houston Waste Solution, LLC, responds to the Original Collective Action Complaint of Plaintiff Javier Uribe, individually and on behalf of all others similarly situated, as follows.

MOTIONS

1. Defendant moves the Court to dismiss Plaintiff’s complaint because Plaintiff has failed to state a claim upon which relief can be granted as required by Rule 12(b)(6).
2. Defendant moves the Court to dismiss Plaintiff’s complaint, or, in the alternative, require a more definite statement, because Plaintiff fails to include a clear demand for relief or damages as required by Rule 8(a)(3).

GENERAL DENIAL

1. Pursuant to Rule 8(b)(1)(3), Defendant generally denies all allegations in the complaint except for those specifically admitted hereafter.

ADMISSIONS AND DENIALS

1. Par. 1: Defendant admits that Plaintiff alleges that this is a collective action under 29 U.S.C. § 201 *et seq.* Defendant denies all other allegations of the paragraph.
2. Par. 2: Defendant denies the allegations in this paragraph.
3. Par. 3: Defendant denies the allegations in this paragraph.
4. Par. 4: Defendant denies the allegations in this paragraph.
5. Par. 5: Defendant denies the allegations in this paragraph.
6. Par. 6: Defendant denies the allegations in this paragraph.
7. Par. 7: Defendant denies the allegations in this paragraph.
8. Par. 8: Defendant denies the allegations in this paragraph.
9. Par. 9: Defendant denies the allegations in this paragraph.
10. Pars. 10: Defendant admits that Plaintiff was employed by it at times within the past three years. Defendant denies all other parts of this paragraph.
11. Par. 11: Defendant admits that it may be served as alleged. Defendant denies all other allegations in this paragraph.
12. Par. 12: Defendant admits the allegations in this paragraph.
13. Par. 13: Defendant lacks knowledge or information sufficient to form a belief about the truth of this allegation.
14. Par. 14: Defendant admits the allegations in this paragraph.
15. Par. 15: Defendant admits that HWS is headquartered in Houston, Texas but denies all other allegations in this paragraph.
16. Par. 16: Defendant admits the allegations of this paragraph.
17. Par. 17: Defendant admits the allegations of this paragraph.

18. Par. 18: Defendant admits that it employs and continues to employ waste disposal drivers but denies all other allegations of this paragraph.

19. Par. 19: Defendant lacks knowledge or information sufficient to form a belief about the truth of this allegation given its ambiguity and vagueness.

20. Par. 20: Defendant lacks knowledge or information sufficient to form a belief about the truth of this allegation given its ambiguity and vagueness.

21. Par. 21: Defendant admits the allegations of this paragraph.

22. Par. 22: Defendant denies the allegations of this paragraph.

23. Par. 23: Defendant admits that Plaintiff sometimes received different dollar amounts for each haul but denies the allegations in the rest of this paragraph.

24. Par. 24: Defendant lacks knowledge or information sufficient to form a belief about the truth of this allegation given its ambiguity and vagueness.

25. Par. 25: Defendant lacks knowledge or information sufficient to form a belief about the truth of this allegation given its ambiguity and vagueness.

26. Par. 26: Defendant lacks knowledge or information sufficient to form a belief about the truth of this allegation given its ambiguity and vagueness.

27. Par. 27: Defendant lacks knowledge or information sufficient to form a belief about the truth of this allegation given its ambiguity and vagueness.

28. Par. 28: Defendant lacks knowledge or information sufficient to form a belief about the truth of this allegation given its ambiguity and vagueness.

29. Par. 29: Defendant lacks knowledge or information sufficient to form a belief about the truth of this allegation given its ambiguity and vagueness.

30. Par. 30: Defendant lacks knowledge or information sufficient to form a belief about the truth of this allegation given its ambiguity and vagueness.

31. Par. 31: Defendant denies the allegations of this paragraph.

32. Par. 32: Defendant denies the allegations of this paragraph.

33. Par. 33: Defendant denies the allegations of this paragraph.

34. Par. 34: Defendant admits that the FLSA mandates certain requirements but denies any further allegations of this paragraph.

35. Par. 35: Defendant denies the allegations of this paragraph.

36. Par. 36: Defendant denies the allegations of this paragraph.

37. Par. 37: Defendant denies the allegations of this paragraph.

38. Par. 38: Defendant incorporates its responses to the prior paragraphs.

39. Par. 39: Defendant denies the allegations of this paragraph.

40. Par. 40: Defendant denies the allegations of this paragraph.

41. Par. 41: Defendant lacks knowledge or information sufficient to form a belief about the truth of these allegations given their ambiguity and vagueness.

42. Par. 42: Defendant admits the allegations of this paragraph.

43. Par. 43: Defendant lacks knowledge or information sufficient to form a belief about the truth of this allegation.

44. Par. 44: Defendant lacks knowledge or information sufficient to form a belief about the truth of this allegation.

45. Par. 45: Defendant lacks knowledge or information sufficient to form a belief about the truth of this allegation.

46. Par. 46: Defendant lacks knowledge or information sufficient to form a belief about the truth of this allegation.

47. Par. 47: Defendant lacks knowledge or information sufficient to form a belief about the truth of this allegation.

48. Par. 48: Defendant lacks knowledge or information sufficient to form a belief about the truth of this allegation.

49. Par. 49: Defendant denies the allegations of this paragraph.

50. Par. 50: Defendant denies the allegations of this paragraph.

51. Par. 51: Defendant denies the allegations of this paragraph.

52. Par. 52: Defendant denies the allegations of this paragraph.

53. Par. 53: Defendant denies the allegations of this paragraph.

54. Par. 54: Defendant denies the allegations of this paragraph.

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56. Par. 56: Defendant incorporates its responses to the prior paragraphs.

57. Par. 57: Defendant denies the allegations of this paragraph.

58. Par. 58: Defendant denies the allegations of this paragraph.

59. Par. 59: Defendant lacks knowledge or information sufficient to form a belief about the truth of this allegation.

60. Par. 60: Defendant denies the allegations of this paragraph.

61. Par. 61: Defendant denies the allegations of this paragraph.

62. Par. 62: Defendant denies the allegations of this paragraph.

63. Par. 63: Defendant lacks knowledge or information sufficient to form a belief about the truth of this allegation.

- 64. Par. 64: Defendant denies the allegations of this paragraph.
- 65. Par. 65: Defendant denies the allegations of this paragraph.
- 66. Par. 66: Defendant denies the allegations of this paragraph.
- 67. Par. 67: Defendant denies the allegations of this paragraph.
- 68. Par. 68: Defendant denies the allegations of this paragraph.

MATTERS IN AVOIDANCE AND DEFENSE

- 1. Any FLSA violation by Defendant was not willful.
- 2. The claims of Plaintiff and the Putative Class are barred by the statute of limitations.
- 3. Any FLSA violation by Defendant was in good faith, and Defendant had reasonable grounds for believing that its acts and/or omissions were not a violation of the FLSA.
- 4. Defendant acted in good faith with respect to all employee compensation decisions.
- 5. Defendant pleads the doctrine of avoidable consequences and failure to mitigate by Plaintiff and the Putative Class.
- 6. Defendant pleads the de minimis exception to the FLSA,
- 7. Defendants' employees were and are exempt from the FLSA.
- 8. Defendant is entitled to a setoff and offset of any amounts paid to Plaintiff or the Putative Class.
- 9. The claims of Plaintiff and the Putative Class are barred by the Portal-to-Portal Act.
- 10. The claims of Plaintiff and the Putative Class are barred by estoppel, equitable estoppel, and waiver.
- 11. Plaintiff and the Putative Class are not entitled to a jury trial on attorneys' fees and liquidated damages.

12. Defendant reserves the right to add or remove additional matters in avoidance and defense as revealed through discovery and as permitted by all applicable laws and rules.

Respectfully submitted,

BUCK KEENAN LLP

/s/John L. Dagley

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CERTIFICATE OF SERVICE

On April 9, 2018, I electronically submitted this pleading to the Clerk of the Court for the U.S. District Court, Southern District of Texas, using the electronic case filing system of the Court. I hereby certify that I have served all counsel of record electronically or by another manner provided by Federal Rules of Civil Procedure 5(b) (2).

/s/ John L. Dagley

John L. Dagley